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Attorney Docket No. 259/175

REMARKS / ARGUMENTS1. Incomplete Action

It is respectfully submitted that the 7/8/04 Office Action was not complete for purposes of 37 CFR 1.104 and MPEP 716.01(B), and the next action (if containing any rejections) should not be a final one.

Along with the April 9, 2004 RCE and preliminary amendment, Applicant submitted a Declaration of Vahan Avetisian under 37 CFR 1.132 addressing the prior art rejections, *inter alia*, explaining the misinterpretations of the cited prior art references in the preceding Office Action. No mention of the declaration or its contents was made in the 7/8/04 Office Action. See MPEP 716.01(B) ("Evidence traversing rejections must be considered by the examiner whenever present. All entered affidavits, declarations, and other evidence traversing rejections are acknowledged and commented upon by the examiner in the next succeeding action. ... Where the evidence is insufficient to overcome the rejection, the examiner must specifically explain why the evidence is insufficient. General statements such as 'the declaration lacks technical validity' or 'the evidence is not commensurate with the scope of the claims' without an explanation supporting such findings are insufficient.").

To the contrary, the only apparent difference in the content of the rejections in this action versus those in the last action prior to submission of the RCE and declaration are the insertion of one sentence on each of pages 6-8 and the phrase "integral and unitary" once on each of pages 15 and 16. None of the new sentences address the Avetisian Declaration.

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2. Election/Restrictions

In the 6/22/2004 telephone conference with the Examiner, Applicant elected "Invention I," i.e., the combination (claims 1-5, 7-16, 19, and 20¹), which election is hereby affirmed. In an effort to facilitate this matter, Applicant canceled claims 22, 24, and 25 without prejudice to their later prosecution. Notwithstanding the aforementioned election, the following comments are made concerning the "Election/ Restrictions" section of the 7/8/2004 action:

- a. It incorrectly characterizes claims 1-15, 7-16, 19, and 20 as "drawn to an automotive pyrotechnic initiator that does not have a glass-to-metal sealed header assembly, and method of making the same ..." (emphases added); none of these claims precludes the header assembly from being glass-to-metal sealed, rather, they simply do not specify whether or not the recited header assembly is glass-to-metal sealed.
- b. There is no other explanation but that the Examiner construed the subcombination group (claims 22, 24, and 25) as lacking the "automotive" limitation qualifying the type of pyrotechnic initiator. This is clear from: (i) the distinction between the characterization of Invention I as "drawn to an automotive pyrotechnic initiator" versus that of Invention II as "drawn to a pyrotechnic initiator"; and (ii) the characterization of Invention II rather than Invention I as the subcombination (e.g., "Inventions I and II are related as combination and subcombination"; "the combination

¹ It is noted that although the 7/8/2004 action refers to Invention I as "claims 1-7, 8-16, 19 and 20," such a group of claims was not pending at the time of the action; rather claims 1-5, 7-16, 19, and 20 were pending.

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as claimed does not require the particulars of the subcombination as claimed because the initiator of group I can perform [its] function without a glass-to-metal sealed header assembly"; "The subcombination has separate utility such as a pyrotechnic initiator of (a) small lifesaving [flotation] device"). Thus, the Examiner has construed Invention I as combination AB_{sub}, and Invention II as subcombination B_{sub}, wherein A is [automotive], B_{sub} is [header assembly], and B_{sub} is [glass-to-metal sealed header assembly]. See MPEP 806.05(c)1. Applicant agrees on the record that the preamble limitation of claim 1, "automotive," is properly construed as an affirmative limitation of the claim, and this construction has clearly been adopted by the Examiner in the restriction. It is unclear, however, why the same limitation of canceled claim 22 was not treated likewise. In any event, the issue is moot, as claims 22, 24, and 25 have been canceled.

3. Prior Art Rejections

Pending elected claims 1-5, 7-13, 15, 16, 19, and 20 again stand rejected as obvious over U.S. Patent No. 5,576,509 to Refouvelet et al. ("Refouvelet"), in view of either U.S. Patent No. 2,741,179 to Taylor et al. ("Taylor") or U.S. Patent No. 3,906,858 to Craig et al. ("Craig"), and for certain of the claims, over that combination in view of still further prior art. By the present amendment, elected claim 14 is canceled, claim 15 is amended to incorporate the limitations of claim 14,

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and new claims 26-29 also drawn to the elected automotive initiator combination' are added.

a. Statement of Interview

The undersigned conferred with Examiner Bergin by telephone on September 16, 2004 in an effort to advance the prosecution of this case. The Refouvelet, Craig, and Taylor references were discussed, including the shortcomings noted below of the rejections based thereon. The Examiner noted the undersigned's comments and did not specifically disagree with any, but at the end of the conference, required submission of this response in order to reconsider the rejections.

b. New Statements in the 7/8/04 Office Action

As noted above, the rejections of the 7/8/04 Office Action are essentially verbatim to those made before Applicant's submission of the RCE and Vahan Avetisian Declaration, except for three new sentences appearing on pages 6-8.

The new sentence on page 6 relates only to claim 20 and is straightforward. The new sentence on page 7 takes issue with Applicant's references to Fig. 2 of Refouvelet, asserting that "the examiner has relied upon Refouvelet et al.'s first embodiment as depicted in fig. 1 and not the second embodiment of fig. 2 as argued in applicant's arguments." To the contrary, the Office has repeatedly relied specifically upon the portion of Refouvelet's Abstract that refers to both the Fig. 1 and Fig. 2 embodiments, i.e., "The casing includes a molded plastics

These claims clearly fall within the elected combination "Invention I" set forth by the Examiner, as they directly depend from claims stated by the Examiner to fall within that group. Thus they clearly include the only element allegedly lacking from the subcombination, i.e., "automotive," and accordingly do not satisfy the statement that the "subcombination has separate utility such as a pyrotechnic initiator of [a] small lifesaving [flotation] device." See MPEP 806.05(c).

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material surrounding at least the endplate and a portion of the electrodes."³ (In fact, it has done so in support of the very point that the disclosure of Refouvelet is NOT limited to the Fig. 1 embodiment). To be sure, there has not previously been any statement by the Office that it is for some reason not considering the full teachings of Refouvelet and is overlooking its most pertinent embodiment. In any case, Applicant's main point is not what the Office has relied upon, but the fact that Fig. 2 - which is part of the disclosure - plainly teaches away from the possibility of combining any of Refouvelet's teachings with Craig or Taylor in the way asserted in the rejections.

The new sentence on page 8 implies that the Applicant has argued that the Office has combined the *specific actual embodiment* - rather than the teachings - of the cited secondary references with the primary reference. As noted in the 9/16/04 teleconference, Applicant's arguments are not so limited, and are directed specifically to the *teachings* of all three references.

c. Refouvelet

Turning to the substance of the rejections, as noted in the 9/16/04 teleconference, the undersigned hopes to avoid further discussion concerning what Refouvelet may or may not *imply*. The point is that from the first action in this case, the Office has recognized that "Refouvelet et al. do not disclose ... the electrically-nonconductive overmolded body surrounding substantially all of the initiator subassembly." The rejections

³ In Fig. 1, the molded plastics material surrounds only the endplate and part of the electrodes. Col. 2, lines 60-61. In Fig. 2, "the molded plastics material 10 surrounds the endplate, part of the electrodes and also the metal wall 4 substantially over its entire height. ... The casing 3 is closed by a plug 16 made of the same plastics material as the molding 10." Col. 4, lines 21-26. The term "at least" in the abstract clearly encompasses both of these embodiments.

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are based on obviousness, not inherent anticipation. Refouvelet lacks something recited in the claims.⁴

d. What Refouvelet lacks is not present in Taylor or Craig

As noted in the Vahan Avetisian Declaration submitted on April 9, 2004, and in the 9/16/04 teleconference, Craig does not disclose a unitary overmolding. Taylor's "rubberlike coating" is completely inapplicable to the context of an automotive initiator, and in any case Taylor's teachings could not possibly be applied to those of Refouvelet in such a way as to result in the claimed "integral, unitary ... overmolded body connected to and surrounding substantially all of said initiator subassembly ... wherein said body provides structural support and installation orientation features."

i. Craig

Craig simply does not disclose a unitary overmolding. It adds nothing to Refouvelet. Figs. 1-4 each clearly show that the coating 65 and disc 46 are two pieces, i.e., *not unitary*. The ordinary meaning of "unitary" requires that something be "undivided, whole." (Merriam Webster's Collegiate Dictionary, 10th Ed. 1995). In contrast, there are clearly divisions between Craig's disc 46 and coating 65. They are depicted as two arcuate line segments in Fig. 1, and as two short vertical straight line segments in Fig. 2. There is no way - with or without improper hindsight - to combine the teachings of Craig with those of Refouvelet to arrive at the claimed invention.

ii. Taylor

⁴ It is unclear how "the search for group I and group II is substantially divergent" as asserted in the restriction, when the primary reference relied upon in the rejections (which as noted is essentially identical to all prior rejections) is described in the rejection's first substantive paragraph as follows: "Refouvelet et al.' initiator subassembly comprises a glass-to-metal sealed header assembly." (Emphases added).


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The Taylor patent and its "rubberlike coating" are completely inapplicable to the context of an automotive (which as noted above the Office has acknowledged to constitute an affirmative limitation of the elected claims) initiator. Again, the details of that are set forth in paragraphs 6 and 7 of the Avetisian Declaration. Also as set forth there, it would be impossible in any case to modify Taylor's teachings so as to result in the "integral, unitary ... overmolded body connected to and surrounding substantially all of said initiator subassembly ... wherein said body provides structural support and installation orientation features" of claim 1. Likewise, there is no way that the two references could possibly be combined to result in the step of "molding an integral, unitary, electrically-nonconductive, overmolded body around said subassembly, such that said body is connected to and surrounds substantially all of said initiator subassembly ... wherein said body provides structural support and installation orientation features."

Respectfully submitted,

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